

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

PANFILO CATALAN,

Complainant,

and

NEW PROCESS STEEL,

Respondent.

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Charge No.: 2006CF2026

EEOC No.: N/A

ALS No.: 07-173

RECOMMENDED ORDER AND DECISION

On March 13, 2007, Complainant, Panfilo Catalan, filed a complaint on his own behalf against Respondent, New Process Steel. That complaint alleged that Respondent discriminated against Complainant on the basis of a physical handicap when it discharged him. (After the complaint in this matter was filed, the Illinois Human Rights Act was amended to change the term "handicap" to "disability." Since the briefing in this matter uses the old terminology, in the hope of avoiding confusion, that terminology is used in this recommended order.)

This matter now comes on to be heard on Respondent's Motion for Summary Decision. Complainant has filed a written response to that motion, and Respondent has filed a written reply to that response. The matter is ready for decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the IDHR is an additional party of record.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility determinations. All evidence was

viewed in the light most favorable to Complainant.

1. On or about January 28, 1988, Respondent, New Process Steel, hired Complainant, Panfilo Catalan.

2. Complainant worked as a Helper in Respondent's Cut to Length (CTL) department. In that position, Complainant routinely lifted heavy steel coils to help feed them into cutting and bending machines.

3. On June 27, 2005, because of a heart condition, Complainant took leave from his job under the Family Medical Leave Act (FMLA). That leave expired on or about September 19, 2005. Complainant did not return to his job at the expiration of his FMLA leave.

4. Between October of 2005 and February of 2006, Complainant made at least three attempts to return to work with Respondent.

5. Complainant concedes that he was never able to return to his former duties as a CTL Helper.

6. Complainant maintains that Respondent had other jobs which he could have performed.

7. On July 12, 2005, Complainant's doctor restricted Complainant to lifting no more than ten pounds.

8. In October of 2005, Complainant's doctor restricted him from performing physical work and recommended that he get a desk job if possible.

9. One of the essential functions of a CTL Helper was the ability to regularly lift steel coils that weighed more than forty pounds.

10. Respondent discharged Complainant on November 11, 2005, although Complainant may not have been aware of his discharge until February of 2006.

11. At the time of his discharge, Complainant was unable to perform the duties of a CTL Helper.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").
2. Respondent is an "employer" as defined by section 2-101(B)(1)(a) of the Act and is subject to the provisions of the Act.
3. Complainant cannot establish a *prima facie* case of discrimination against him on the basis of a physical handicap.
4. Respondent can articulate a legitimate, non-discriminatory reason for discharging Complainant.
5. There is no genuine issue on the issue of pretext, and respondent is entitled to a recommended order in its favor as a matter of law.
6. A summary decision in Respondent's favor is appropriate in this case.

DISCUSSION

On or about January 28, 1988, Respondent, New Process Steel, hired Complainant, Panfilo Catalan. Complainant worked as a Helper in Respondent's Cut to Length (CTL) department. In that position, he routinely lifted heavy steel coils to help feed them into cutting and bending machines.

On June 27, 2005, because of a heart condition, Complainant took leave from his job under the Family Medical Leave Act (FMLA). That leave expired on or about September 19, 2005. Complainant did not return to his job at the expiration of his FMLA leave. Between October of 2005 and February of 2006, Complainant made at least three attempts to return to work with Respondent. However, Respondent refused to reinstate him. Instead, Respondent discharged Complainant on November 11, 2005, although Complainant may not have been aware of his discharge until February of 2006. Subsequently, Complainant filed a charge of discrimination against Respondent.

This matter is now being considered pursuant to Respondent's motion for summary decision. A summary decision is analogous to a summary judgment in the Circuit Court. **Cano v. Village of Dolton**, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). Such a motion should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. **Strunin and Marshall Field & Co.**, IHRC, ALS No. 536(L), March 3, 1983. The movant's affidavits should be strictly construed, while those of the opponent should be liberally construed. **Kolakowski v. Voris**, 76 Ill. App. 3d 453, 395 N.E.2d 6 (1st Dist. 1979). The movant's right to a summary decision must be clear and free from doubt. **Bennett v. Raag**, 103 Ill. App. 3d 321, 431 N.E.2d 48 (2d Dist. 1982).

To establish a *prima facie* case of handicap discrimination, Complainant would have to prove three elements. He would have to show 1) that he is handicapped under the Act, 2) that Respondent took an adverse action against him relating to that handicap, and 3) that his handicap is unrelated to the performance of his job duties. **Habinka v. Human Rights Commission** 192 Ill. App. 3d 343, 548 N.E.2d 702 (1st Dist. 1989); **Kenall Mfg. Co. v. Illinois Human Rights Commission**, 152 Ill. App. 3d 695, 504 N.E.2d 805 (1st Dist. 1987).

Unfortunately for Complainant, it is abundantly clear that he cannot establish either the first or third element of his *prima facie* case. That is because there is no question that his condition is related to the performance of his job duties.

Complainant worked for Respondent as a CTL Helper. One of the essential functions of a CTL Helper was the ability to regularly lift steel coils that weighed more than forty pounds. Unfortunately, Complainant developed a heart condition that prevented him from doing heavy lifting. On July 12, 2005, Complainant's doctor restricted Complainant to lifting no more than ten pounds. In October of 2005, Complainant's doctor restricted him from performing physical work and recommended that he get a desk job if possible. Aware of those restrictions,

Respondent refused to reinstate him. Complainant concedes in his response to Respondent's motion that he was never able to return to his former duties. Clearly, his physical condition prevented him from doing his old job.

Under the Act and the Human Rights Commission's interpretive rules, a handicap can be defined as a determinable physical or mental condition that resulted from disease (or other listed causes) and is unrelated to the ability to perform the duties of a particular job. See 775 ILCS 5/1-103(l)(1); 56 Ill. Adm. Code, Section 2500.20(a). Because Complainant's condition prevented him from doing the duties of his job, the condition cannot be classified as a handicap under the Act and Complainant cannot establish his *prima facie* case.

Complainant asserts that he could have performed other jobs for Respondent. Respondent argues that he could not. That dispute is the cornerstone of Complainant's response to the motion for summary decision, but it is completely immaterial to the merits of Complainant's case.

It is clear that there is no duty under the Act to transfer an employee to a different job if he cannot perform the duties of his existing job. ***Fitzpatrick v. Illinois Human Rights Commission***, 267 Ill. App. 3d 386, 642 N.E.2d 486 (4th Dist. 1994); ***Caterpillar v. Illinois Human Rights Commission***, 154 Ill. App. 3d 424, 506 N.E.2d 1029 (3d Dist. 1987). As a result, it does not matter whether Complainant could perform other jobs for the company. His case was doomed by his inability to perform the essential duties of a CTL Helper.

In sum, there is no genuine issue of material fact on whether Complainant's heart condition is a handicap. As a result, Respondent is entitled to a recommended order in its favor as a matter of law and the motion for summary decision should be granted.

RECOMMENDATION

Based upon the foregoing, there is no genuine issue of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended

that the complaint in this matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 21, 2009